

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FREDERICK PAYNE, SR.,	:	
Plaintiff,	:	
	:	
v.	:	Case No. 3:08cv657 (CFD) (TPS)
	:	
FRANCISCO ORTIZ, JR., et al.,	:	
Defendants.	:	

RULING ON PLAINTIFF'S MOTION TO AMEND [Doc. #43]

The plaintiff has filed a motion for leave to amend his complaint. He purports to include the proposed amended complaint in the motion.

"Although leave to amend a pleading under the Federal Rules of Civil Procedure 'shall be freely given when justice so requires,' such leave will be denied when an amendment is offered in bad faith, would cause undue delay or prejudice, or would be futile." Leonelli v. Pennwalt Corp., 887 F.2d 1195, 1198 (2d Cir. 1989) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

In his proposed amended complaint, the plaintiff identifies only one defendant. If the court were to grant his motion, the claims against all other defendants would be considered withdrawn. See International Controls Corp. v. Vesco, 556 F.2d 665, 668 (2d Cir. 1977) (holding that the amended complaint completely replaces original complaint), cert. denied, 434 U.S. 1014 (1978). The court cannot ascertain whether this is the plaintiff's intent.

Accordingly, the motion to amend is denied without prejudice. The plaintiff may refile his motion accompanied by a separate proposed amended complaint. The proposed amended complaint shall include all defendants and all claims the plaintiff intends to pursue in this action. If the plaintiff refiles his motion, the court will then review the proposed amended complaint to determine whether leave to amend should be granted.

The plaintiff's motion to amend [**Doc. #43**] is **DENIED**.

SO ORDERED at Hartford, Connecticut this 27th day of September 2011.

/s/ Thomas P. Smith
Thomas P. Smith
United States Magistrate Judge